Utusan Melayu (M) Bhd v Lim Guan Eng

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(NCVC)-99–01 OF 2012
RAUS SHARIF PCA, CLEMENT SKINNER AND AZAHAR MOHAMED JJCA
11 MARCH 2013

Civil Procedure — Appeal — Appeal to Court of Appeal — Appeal against High Court order that defendant pay plaintiff general and aggravated damages of RM200,000 with interest — Whether leave of Court of Appeal required pursuant to s 68(1)(a) of the Courts of Judicature Act 1964 — Whether decision of Federal Court in Harcharan Singh Sohan Singh v Ranjit Kaur S Gean Singh was ambiguous — Courts of Judicature Act 1964 s 68(1)(a)

Lim Guan Eng ('the plaintiff'), the Chief Minister of Penang, brought an action in libel against the Utusan Melayu (M) Sdn Bhd ('the defendant') on the grounds that the defendant had wrongfully and with intention to defame the plaintiff published an article under the title 'Kebiadaban Guan Eng' in the *Utusan Malaysia* issue of 20 December 2012. The defendant admitted publishing the article but contended that the article was published in response to an attack by the plaintiff in his speech on 19 December 2010. At the same time the defendant claimed that the publication of the article was made 'bona fide' and was a fair and relevant response to the alleged attack against the defendant by the plaintiff. Additionally or alternatively the defendant claimed the defence of qualified privilege. The High Court found the article published by the defendant to be defamatory of the plaintiff and ordered the defendant to pay the plaintiff a single global sum of RM200,000 as general and aggravated damages with interest at 4%pa from the date of the order until the date of full settlement. Aggrieved by the High Court decision, the defendant appealed to the Court of Appeal. However, after duly filing its notice of appeal, the defendant filed the present application for leave to appeal to the Court of Appeal against the decision of the High Court. The defendant claimed that the present application was filed through abundance of caution in view of the prevailing conflicting positions taken by different panels of the Court of Appeal in respect of the interpretation of the decision of the Federal Court in *Harcharan Singh Sohan Singh v Ranjit Kaur S Gean Singh* [2011] 3 CLJ 593 (*Harcharan Singh*'s case). In *Harcharan Singh*'s case the Federal Court decided that s 68(1)(a) of the Courts of Judicature Act 1964 ('the Act'), which provided that the leave of the Court of Appeal was required before an appeal could be brought to the Court of Appeal, applied when the amount or value of the subject matter of the claim (exclusive of interest) was less than RM250,000. The Federal Court also held that the time for determining the current value of

the subject matter of the claim (exclusive of interest) would be at the time of the filing of the claim.

Held, striking out the application with no order as to costs:
There was no ambiguity with regard to the decision of the Federal Court in *Harcharan Singh*'s case. In fact s 68(1)(a) of the Act clearly provides that the time for determining the current value of the subject matter of the claim (exclusive of interest) is at the time of filing the claim and not the judgment amount granted. In the instant case, it was not in dispute that the plaintiff was claiming in excess of RM250,000. As such there was no necessity for the defendant to apply for leave pursuant to s 68(1)(a) of the Act even though the judgment granted against the defendant was only RM200,000. This was especially so since the defendant had already filed the notice of appeal at the Court of Appeal registry (see paras 12–13).

[Bahasa Malaysia summary

Lim Guan Eng ('plaintif'), Ketua Menteri Pulau Pinang, mengambil tindakan libel terhadap Utusan Melayu (M) Sdn Bhd ('defendan') atas alasan bahawa defendan telah secara salah dan dengan niat untuk memfitnah plaintif menerbitkan artikel di bawah tajuk 'Kebiadaban Guan Eng' di dalam *Utusan Malaysia* isu 20 Disember 2012. Defendan mengaku menerbitkan artikel tetapi berhujah bahawa artikel diterbitkan dalam menjawab kepada bidasan plaintif di dalam ucapannya pada 19 Disember 2010. Pada masa yang sama defendan mendakwa bahawa penerbitan artikel tersebut di buat dengan 'bona fide' dan adalah adil dan jawapan relevan kepada bidasan yang didakwa terhadap defendan oleh plaintif. Selanjutnya atau secara alternatif defendan menuntut pembelaan perlindungan bersyarat. Mahkamah Tinggi mendapati artikel yang diterbitkan oleh defendan adalah pernyataan fitnah terhadap plaintif dan memerintahkan plaintif membayar jumlah tunggal sebanyak RM200,000 sebagai ganti rugi am dan teruk dengan faedah 4%pa dari tarikh perintah sehingga tarikh penyelesaian penuh. Tidak puas hati dengan keputusan Mahkamah Tinggi, defendan merayu kepada Mahkamah Rayuan. Walau bagaimanapun, selepas memfailkan notis rayuannya, defendan memfailkan permohonan ini untuk izin merayu kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi. Defendan mendakwa bahawa permohonan ini difailkan dengan berhati-hati mengambil kira wujudnya pandangan bercanggah yang diambil oleh panel Mahkamah Rayuan yang berbeza berkaitan tafsiran keputusan Mahkamah Persekutuan dalam kes *Harcharan Singh Sohan Singh v Ranjit Kaur S Gean Singh* [2011] 3 CLJ 593 (kes *Harcharan Singh*). Dalam kes *Harcharan Singh*, Mahkamah Persekutuan memutuskan bahawa s 68(1)(a) Akta Mahkamah Kehakiman 1964 ('Akta'), yang memperuntukkan bahawa izin Mahkamah Rayuan diperlukan sebelum rayuan boleh di bawa ke Mahkamah Rayuan, digunapakai apabila jumlah atau nilai perkara tuntutan (tidak termasuk faedah) kurang daripada RM250,000. Mahkamah Persekutuan juga memutuskan bahawa masa untuk menentukan

nilai semasa perkara tuntutan (tidak termasuk faedah) adalah pada masa memfailkan tuntutan tersebut.

Diputuskan, membatalkan permohonan tanpa perintah kepada kos:
Tidak terdapat kekaburan berkaitan keputusan Mahkamah Persekutuan di dalam kes *Harcharan Singh*. Sebenarnya s 68(1)(a) Akta jelas memperuntukkan bahawa masa untuk menentukan nilai semasa perkara tuntutan (tidak termasuk faedah) adalah pada masa memfailkan tuntutan dan bukan jumlah penghakiman diberikan. Dalam kes ini, tidak dipertikaikan bahawa plaintif menuntut melebihi RM250,000. Oleh itu tidak perlu untuk defendan memohon izin berikutan s 68(1)(a) Akta walaupun penghakiman diberikan terhadap defendan hanya sebanyak RM200,000. Ini adalah kerana defendan telah memfailkan notis rayuan di pejabat pendaftaran Mahkamah Rayuan (lihat perenggan 12–13).]

Notes

For cases on appeal to Court of Appeal, see 2(1) *Mallal's Digest* (4th Ed, Reissue) paras 857–869.

Cases referred to

Harcharan Singh Sohan Singh v Ranjit Kaur S Gean Singh [2011] MLJU 78; [2011] 3 CLJ 593, FC (refd)

Lam Kong Co Ltd v Thong Guan Co Pte Ltd [2000] 4 MLJ 1; [2000] 3 CLJ 769, FC (refd)

Yai Yen Hon v Teng Ah Kok @ Sim Huat Sdn Bhd & Anor [1997] 1 MLJ 136; [1997] 2 CLJ 68, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 68(1)(a)

Appeal from: Civil Suit No 22(NCVC)–16 of 2011 (High Court, Pulau Pinang)

Mohana Kumar (Shafie & Mohan) for the appellant/applicant.
Jagdeep Singh Deo (Karpal Singh & Co) for the respondent.

Raus Shariff PCA (delivering judgment of the court):

[1] This is an application vide encl 2(a) filed by Utusan Melayu (M) Bhd ('the defendant') for leave to appeal to the Court of Appeal. On 25 January 2013, after hearing the parties we struck out the application. We now give our reasons.

[2] What had happened in this case is this: The plaintiff, the Chief Minister

of Penang brought an action against the defendant for damages in libel allegedly arising from material printed and published in the newspaper under the banner of *Utusan Malaysia*. It was the plaintiff's case that the defendant had wrongfully and with intention to defame the plaintiff, published in the *Utusan Malaysia* issue of 20 December 2012 an article under the title 'Kebiadaban Guan Eng'.

[3] The defendant in the statement of defence admitted publishing the article concerning the plaintiff but contended that it was published as a response to the attack on the defendant by the plaintiff in a speech made by the plaintiff at the 'Konvensyen Pakatan Rakyat Kebangsaan Kedua' held at Kepala Batas, Pulau Pinang on 19 December 2010. At the same time the defendant denied that the words complained of bore or was capable of bearing the meaning attributed to it by the plaintiff and/or it was defamatory of the plaintiff. The defendant claimed that the publication of the article was made 'bona fide' and was a fair and relevant response to the alleged attack against the defendant by the plaintiff on 19 December 2010. Additionally or alternatively, it was the defendant's defence that the article was published 'on an occasion of qualified privilege at common law'.

[4] At the conclusion of the trial, the High Court found the article published by the defendant was defamatory of the plaintiff. As a result the plaintiff was awarded damages for libel. The defendant was ordered to pay the plaintiff a single global amount as general and aggravated damages in the sum of RM200,000 with interest on the said RM200,000 at 4%pa from the date of the order until date of full settlement.

[5] Aggrieved by the High Court decision the defendant preferred an appeal to the Court of Appeal. A notice of appeal was duly filed on 11 January 2012 with the Court of Appeal registry. However, the defendant had also filed this application for leave to appeal against the decision of the High Court.

FINDINGS

[6] At the outset, we enquired from learned counsel for the defendant on the necessity of filing the present application when a notice of appeal has already been duly filed with the Court of Appeal registry. Learned counsel informed us that the application was filed through abundance of caution in view of the prevailing conflicting positions taken by different panels of the Court of Appeal in respect of the interpretation of the decision of the Federal Court in *Harcharan Singh Sohan Singh v Ranjit Kaur S Gean Singh* [2011] MLJU 78; [2011] 3 CLJ 593 ('*Harcharan Singh*').

[7] In *Harcharan Singh* the appeal arose from the Court of Appeal's decision

in striking out the appellant's appeal on the ground that the appellant had failed to obtain leave of the Court of Appeal pursuant to s 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA') which provides that:

> (1) No appeal shall be brought to the Court of Appeal on any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

[8] Leave to appeal was granted based on two questions of law, namely:

(a) what is the true meaning and effect of s 68(1)(a) which provides that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of claim (exclusive of interest) is less than RM250,000, except with leave of the Court of Appeal?; and

(b) further and/or in the alternative, at which point of time is the amount or value of the subject matter of the claim (exclusive of interest) to be determined for the purposes of s 68(1)(a) of the CJA.

[9] It was argued on behalf of the appellant in that case that s 68(1)(a) of the Courts of Judicature Act 1964 did not apply because the subject matter of the claim was for declaration coupled with a claim for ancillary reliefs, and therefore, no leave was required before an appeal could be brought before the Federal Court. However the Federal Court on the facts rejected the said argument and dismissed the appeal.

[10] The Federal Court answered the first question in the affirmative in that s 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA') still applies when the amount or value of the subject matter of the claim (exclusive of interest) is less that RM250,000. As for the contention that s 68(1)(a) did not apply because of the relief sought by the appellant was for declaration, the Federal Court endorsed its earlier decision in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1; [2000] 3 CLJ 769 (*Lam Kong Company*). In *Lam Kong Company* it was held, inter alia, that item (ii) of the Court of Appeal Practice Direction No 2 of 1996 only applies to declarations effecting subject matters that have no value attached to them or those with values that cannot be quantified. However in *Harcharan Singh* the Federal Court found that the subject matter of the claim had been indentified and its value determined at RM248,500. Obviously, it was below RM250,000, and thus s 68(1)(a) was still applicable, meaning that leave was required before an appeal could be brought to the Court of Appeal.

[11] As to the second question, the Federal Court held that the time for

determining the current value of the subject matter of the claim (exclusive of interest) would be at the time of filing the claim. In deciding as it did, the Federal Court had in fact followed the earlier decision of the then Supreme Court in the case of *Yai Yen Hon v Teng Ah Kok @ Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68. In that case it was similarly held that the determining factor is not the amount recovered or the amount of the award handed down by the trial court but rather the amount or value claimed in the civil suit.

[12] Thus, we see no ambiguity with regard to the decision of the Federal Court in *Harcharan Singh*. In fact s 68(1)(a) of the Courts of Judicature Act 1964 clearly provides that the time for determining the current value of the subject matter of the claim (exclusive of interest) is at the time of filing the claim and not the judgment amount granted. In the instant case, it is not in dispute that the plaintiff was claiming in excess of RM250,000. As such there was no necessity for the defendant to apply for leave pursuant to s 68(1)(a) of the Courts of Judicature Act 1964, even though the judgment granted against the defendant was only RM200,000.

[13] Since we found that leave was not required for the defendant to pursue the appeal, we accordingly struck out the defendant's application with no order as to costs. This is especially so when the notice of appeal had been duly filed at the Court of Appeal registry.

Application struck out with no order as to costs.

Reported by Kohila Nesan